B. Co-operative

1952. ~~1952~~ **File No.** Chargeed Expenditure/52

Legal Department.

B **BRANCH**

Subject:— L. A. Bill No. II of 1952

A Bill to amend the Bombay Co-operative Societies Act, 1925, and the Bombay charged Expenditure Act, 1950.

Bom. Act No. II of 1952.

P. 29 E

File No. B. Co-operative and Chargeed Expenditure/1959

Gen. 194 e.

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Office of the R.L.A.

The requisite draft Bill is sent herewith.

2. It is pointed out that the Development Department papers do not state the conditions, if any, on which the guarantee is to be given. If in the consideration, the State Government is to have a charge of lien on the property of the society, such charge or lien should have priority over the charge of the debenture holders. Although the draft bylaws provides that conditions on which debentures will be issued will be approved by Government, one of the draft bylaws provides that debenture holders will have a first change on the property of the society.

2. The subject-matter of the this Bill falls under entry 32 in List II in the Seventh Schedule to the Constitution of India. As the Bill does not relate to any matter in the Concurrent Legislative List, it will not be necessary to reserve it for the consideration of the President with reference to article 254(2) of the Constitution.

The Bill does not require any sanction but requires the recommendation of the Governor under clauses (1) and (3) of article 207.

Sd/-H.R.Dhurandhar.
19-10

Remembrancer of Legal Affairs.

U.R. to D.D. No. 889-Conf1, dated the 19th October 1951.

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S.C. 4/7 K.S.R. 617

4 copies.

Office of the R.L.A.

Para. 3 of Development Department note at pages 25 to 28. Section 33A of the Bombay Cooperative Societys Act, 1925, enables Government to give loans to societies. But contribution to the share capital of a society cannot be treated as a loan to the society. As the intention is to enable Government to contribute to the share capital of societies, it is desirable, as pointed out in this Department U.R. No. 12985 dated 12th September 1950 at p. 5 ante, to amend the Act by the insertion of an express provision. The view taken by secretary, Development Department in his note dated 21-6-1951 at p. 29 is, therefore, correct. The object in view cannot be achieved by resorting to the provisions of section 67.

As regards the question of Government exercising certain rights in the management of societies to which Government has given financial assistance, it may be pointed out that in such matters it would not be safe to rely on the powers of the societies to make by-laws, as such by-laws can be amended by the societies under section 16. If the requisite provisions are not going to be inconsistent with or override the provisions of the Act, such matters can be left to the rules to be made by Government and for that purpose section 71 may be suitably amended. But if the rights to be exercised by Government embrace matters which go far beyond the rules and bye-laws which can validly be made under the Act an express provision will have to be made in the Act itself stating the nature of the powers to be exercised by Government.

Para.4. It is true that Article 293 of the Constitution refers to guarantees which are to be given for loans to be floated by the State. But contributions to share capital of societies or loans

to societies are quite distinct from such guarantees and therefore unless the former expenditure is made a charge on the Consolidated Fund under Article 202(3)(f) , it will be subject to the vote of the Assembly. There is no legal objection to continuing the present practice to submit such expenditure to the vote of the Assembly.

Sd/- J.R.Dhurandhar.
6-11

Remembrancer of Legal Affairs.

U.R. to D.D. No. 17569 , dated the 6th November , 1951.

Office of the R.L.A.

The R.L.A. in his opinion No. 29-P-Confl. dated the 12th September 1951 (page 1 ante) has held that the shares of the Central Co-operative Housing Finance Society would be securities within the meaning of the proviso to section 20(1) of the Indian Trusts Act, 1882 and "approved securities" within the meaning of section 2(3) of the Insurance Act, 1938, provided the principal thereof and the interest ther on are guaranteed by Government, But such guarantee cannot be given by Government save by legislation (see Article 202(3)(f) of the Constitution of India).

2. With reference to the above, the Secretary, Finance Department in his note at page 8 ante observes as follows, namely :-

"The proviso to section 20 of the Indian Trusts Act makes it clear that a security "both the principal whereof and the interest whereon shall have been fully and unconditionally guaranteed by any State Government" shall be deemed to be the security of that State. The definition of approved security again makes a clear distinction between securities charged on the revenue of the Government by a Part A State or guaranteed fully as regards the principal and interest by the .. .. Government of any Part A state".

He has therefore drawn the conclusion that purely for the purpose of gua antee, it is not necessary that the liability thereof should be made into a charged liability in view of this aspect he thinks that the Bill should not be promoted. The R.L.A. is requested to advise.

3. The proviso th clause (a) of section 20 of the Indian Trusts Act, 1882 was inserted by the Indian Trustes(Amendment) Act, 1934 (XVIII of 1934). In the Statement of Objects and Reasons underlying the said Act of 1934 it is observed as follows :-

"Certain Provincial Governments, and in particular the Government of Madras, are desirous that the status of trustee securities should be extended to debentures issued by Land Mortgage Banks and similar corporations, provided that both the principal and interest of such securities are fully and unconditionally guaranteed by the Local Government concerned. The most suitable method of giving effect to this in a general form was considered in connection with the Reserve Bank legislation, and the proposed amendment to the Indian Trusts Act, 1882, follows, with suitable varbal alterations, the wording of the first proviso to sub-section (8) of section 17 of the Reserve Bank of India ACt, 1934."

The said amendment was inserted under the Bovernment of India Act, 1919.

Under the section 30(1) of the Government of India Act, 1919 the Local Government had been empowered to make any contract for the purposes of the Act. A guarantee in a kind of contract (See section 126 Indian Contract Act, 1872) There was not separate provision in the Government of India Act of 1919 regarding guarantee to be given by the Local Government. Whatever guarantees had to be given by the Provincial Government had to be given in the name of the Secretary of State under section 30 of the said Act. Under sub-section (2) of section 30 it was provided that every --- contract made for the purpose of sub-section (1) of that section had to be executed by such person and in such manner as the Governor General in Council by resolution directs or authorises and if so executed may be enforced against the Secretary of State in Council. Section 32 of the said Act further provided that the Secretary of State in Council may sue or be sued by the name of the Secretary of State in Council as a body corporate, and under sub-section (4) of section 32 of the said Act. The Secretary of State in Council was not personally liable, in respect of any contract made on his behalf but all such liabilities and all costs or damages in respect thereof were to be borne by the Revenue of India. Under section 20(2)(c) of the Act also it was provided that all expenses, debts and liabilities lawfully directed and incurred on account of the Government of India were to be charged on the revenues of India alone.

It appears that certain guarantees were provided to be given under the Act of the Local Legislature e.g. under section 33A of the Bombay Co-operative Societies Act, 1925. under section 72D (3) (iii) of the Government of India Act, 1919, it was provided that nothing in the foregoing sub-section would require proposals to be submitted to the Council relating to the expenditure of which the amount was prescribed by or under any law. It will thus appear that whether the guarantees were given under a contract or under an Act of a local legislature the amount of such guarantees were non-votable by the then legislature. The question, therefore, of making a guarantee either given under a contract or an Act of the local legislature a charge on the revenues of India did not arise under the said Act. It will be significant to note that it was provided under sub-section (5) of section 178 of the Government of India Act, 1935 that any liability of any local Government in respect of any loan, guarantee or financial obligation outstanding immediately before the commencement of Part III of that Act and secured upon the revenues of the Province were to be enforced in accordance with the provisions of section 179, that is, by legal proceedings against the Secretary of State in Council and any sum ordered to be paid by way of debt, damages or costs in any such proceedings were to be paid out of the revenues of the Province. After the coming into force of Part III of the Government of India Act, 1935 the position is different as regards the giving of guarantee. Expenditure which is not expressly charged on the revenues of the Province was to be subject to the vote of the Legislative Assembly (see section 78(3)(g) and 79). The provision in the Government of India Act of 1919, which provided that any expenditure prescribed by or under any law was omitted in the Government of India Act of 1935 and does

so appear in the present constitution. Whatever may have been the position before the Government of India Act of 1935 came into force in 1937, since then no Expenditure can be a non-votable unless it falls under any of the categories mentioned in sections 78 and 79 of the Act of 1935 or Article 202 of the present Constitution. If such Expenditure does not fall under sub clauses (a) to (e) of clause (2), it has to be charged on the revenues by an Act of the Legislature. After the coming into force of the said Act of 1935, theprovision regarding the giving of guarantee has been examined in the Advocate General's opinion (Shri M.C.Setalvad) dated 30th August 1940 (copy to Finance Department under R.L.A.'s No. 79-Confl. dated the 31st August 1940) in which it has been observed as follows :-

"A contract providing forpayments over a series of years irrespective of the assent by the Assembly to a grant would be ultra vires and not binding. Having regard to the provisions of the Government of India Act, it would appear that even the assembly would not be competent to pass a law which would prevent any expenditure spread over a number of years being subject to its vote as provided by section 79(2) of the Act. The only way in which it can prevent any expenditure being the subject of a grant by it would be by passing an Act under section 78(3)(g) of the Act, which will have the effect of making the expenditure dealth with by it expenditure charged on the revenues of the Province."

It may also be pointed out that to accord with the provisions of the Government of India Act, 1935, the provisions of clause (b) of section 20 of the Indian Trusts Act were adapted by the Adaptation Order in 1937 for the reasons that after the commencement of Part III of the Goverument of India Act, 1935, the Imperial Parliament would not pass any Act charging any securities on the revenues of India and that charge will be either on the revenues of the Federation.

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or on the revenues of a Province. Clause (c) of the Indian Trusts Act, 1882 was similarly adapted in the year 1937 by the Adaptation Order in Council, 1937, for the reasons that Co-operative Societies being a Provincial subject, presumably any guarantees that may be given in future in respect of the interests on future debentures of the Bombay Provincial Co-operative Bank will be given by the Provincial Government. The Opinion of Shri M.C. Setalwad referred to above was confirmed by Shri C.K. Daphtary in his opinion No. 3 dated 1st March 1949 in connection with the question of giving guarantee to the Bagalkot Cement Company who observed as below :-

"A contract providing for payment by Government over a series of years irrespective of the assent of the Assembly to a grant would be ultra vires and not binding. The expenditure will not be a charge on the revenues of the Province under section 78(3). Accordingly the expenditure would have to be submitted every year as a demand for a grant under section 79(2)."

As regards the question whether a statement should be included in the guarantee agreement to the effect that the amount payable would be subject to the assent of the legislature, he advised that "for the purpose of a prospectus, the statement that the guarantee is subject to a vote, will be a statement of fact rather than of law. The possible refusal of the Legislature is a contingency to which the attention of the prospective share-holder ought to be pointedly called, otherwise it may be open to any one taking shares subsequently to repudiate the bargain on the ground that there was a material omission amounting to misrepresentation."

It must be however noted that the Solicitor to Government of India (Shri Nanavati) in his D.O. dated

4th March 1949 in connection with the Bagalkot Cement Company was of opinion that it was not the practive of the Government of India to charge guarantees on the revenue. It appears that the Covernment of India are still following that practive, In their latest enactment namely, the State Financial Corporation Act, 1951, in section 6, although the shares and dividend of the Financial Corporation are guaranteed, they are not required to be charged on the revenues. The above view of the Solicitor to the Government of India and the practice followed by that Government of India and the was considered at the time of the Bagalkot Cement Company and was not accepted by the Bombay Government in view of the opinion both of Shri Setalved and Daphtary. The Solicitor to the Government of India has admitted that whatever may be the position in law, from the practical point of view it would be convenient to continue the present practice. This is hardly convincing. In any case, it does not appear that the Government of India has considered the changed position in the Constitution since 1937.

From the opinions of the Advocates General referred to above it is clear that the words "fully guaranteed" or "fully and unconditionally guaranteed" means that such guarantees much be such as have been made a charge on the revenues of the State and for the purposes of the Indian Trusts Act, 1882 and the Insurance Act, 1938 the guarantee must be given full legal sanction by making it a charge on the Consolidated Fund of the State. and where such guarantee is given under a mere agreement and the executive has to go before the Legislature for its vote the trustees or the Insurance Companies will not be entitled to invest their money in such securities.

The Secretary, Finance Department in para 2 of his note at page 9 states that if any Government in pursuance of the executive authority vested in it does give

give a guarantee then the party concerned can enforce the guarantee against Government in a suit and that he would get a decree by a competent Court under article 202(3)(e) of the Constitution and the amount due under the decree is automatically to be charged on the consolidated fund of the State. This aspect of the case was considered by the Advocate General (Shri C.K.Daphtary) in his opinion No. 3 dated 1st March 1949. He had observed as follows :*

"I am unable to comprehend the suggestion that a decree could be obtained against Government which would be a charge on the renuvues of the Province. This is on the assumption that the Court will decide against Government , which assumption does not appear to me to be well founded. If the Legislature at any stage refuses to sanction the grant, no claim could be enforced, and the Court would not pass any decree.

The Secretary, Development Department in thelinked case received subsequently has requested the R.L.A. to draft the necessary Bill to amend the Bombay Co-operative Societies Act so as to -

(1) permit companies, banks and firms to hold shares of the proposed Housing Co-operative Societies, and

(2) incorporate such financial liabilities by charge of the guarantee which the Government proposes to give in respect of debentures and share capital of the proposed Corporation.

The requisite Bill is accordingly sent in a linked case.

Sd/-J?R?Dhurandhar.
28-4

Remembrancer of Legal Affairs.

U.R. to D.D. No. 989-Confl. dated the 29th November 1951.

A requisite draft Bill is sent herewith.

Clause 2 of the Bill :- The definitions of the terms "Banking Company" "Company" and "firm" are inserted in section 3 of the Bombay Cooperative Societies Act. The term "Company" is defined to mean a company registered under the Indian Companies Act, 1913. It would include a banking company company also. As it is intended to enable firms x registered under the Indian Partnership Act to become members of cooperative societies, the term "firm" has been defined.

Clauses 3 to 6 of the Bill :- Sections 6,7,9 and 18 of the Bombay Cooperative Societies Act are amended to achieve the object in view.

Clause 7 of the Bill :- Section 33A of the Bombay Cooperative Societies Act is amended so as to empower the Government to contribute to the share capital of a society or to guarantee the repayment of share capital of a society to its members and the payment of dividend at such a rate as may be specified. The provision for guaranteeing debentures is already there in section 33A.

Clause 8 of the Bill:- Section 5-A has been inserted in the Bombay charged Expenditure Act, 1950 so as to charge on the consolidated Fund of the State the expenditure incurred on account ofthe guarantee to be given to the proposed Housing Finance Society for the repayment of the share capital to its shareholders and the payment of dividend at a rate of 3½ %. From the linked case it appears that for the present it is intended to guarantee the share capital and the dividend thereon.

The subject matter of the Bill falls under entry 32 in List II in the Seventh Schedule to the Constitution. As the Bill does not relate to any matter in the concurrent legislative list, it will not be necessary to reserve it for the consideration of the President with

reference to article 254 of the Constitution.

The Bill does not require any sanction but requires recommendation of the Governor under clauses (1) and (3) of article 207 of the Constitution.

Sd/-J.R. Dhurandhar
28-11

Remembrancer of Legal Affairs.

U.R. to D.D. No. 19148 , dated the 29th November, 1951.

S.C. 4/7
4 copies.

No. 2038

Legal Department.

Bombay Castle (Bombay No. 1), 8th February 1952.

From

Shri J.R.Dhurandhar,
Additional Secretary to the Government of Bombay.

To

The Secretary to the Governor of Bombay.

Subject :- The Bombay Co-operative Societies and Charged Expenditure (Amendment) Bill, 1952.

Sir,

With reference to article 200 of the Constitution of India, I am directed to forward herewith for the assent of His Excellency the Governor the authentic copy of the Bombay Co-operative Societies and Charged Expenditure (Amendment) Bill, 1952, which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 16th and 24th January 1952, respectively.

2. The subject matter of the Bill falls under entry 32 in list II in the Seventh Schedule to the Constitution. As the Bill does not relate to any matter in the concurrent legislative list, it isnot necessary to reserve the Bill for the consideration of the ~~Rrasidms~~ President with reference to article 254 of the Constitution. It is also not necessary to reserve the Bill for the consideration of the President with reference to article 31(3) or any other article of the Constitution.

3. The date on which the Excellency the Governor's assent is given may kindly be entered in the endorsement.

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4 copies.

4. I also forward herewith one copy of each of

1).	Bill as introduced in the Bombay Legislative Assembly with the Statement of Objects and Reasons.	THE ITEMS Nos. 1, 2 and 4 and two copies of item No. 3 of the papers noted in the margin.
2).	Bill as read for the third time and passed by the Bombay Legislative Assembly and as introduced in the Bombay Legislative Council.	
3).	Bill as read for the third time and passed by the Bombay Logislative Council.	
4).	Extracts from the proceedings of the Bombay Legislative Assembly dated the 16th January 1952 and of the Bombay Legislative Council dated the 24th January 1953.	

The Bill was not referred to a Select Committee.

Yours faithfully,

Sd/-J.R.Dhurandhar.
8-2

Additional Secretary to Government.

Copy forwarded with compliments to the Secretary to the Government of Bombay, Development Department.

Sd/-
11-2

Sd/
No. G.S. :- 397
Secretary to the Governor
of Bombay.

From

The Secretary to the Governor of Bombay.

To

The Secretary to Government.

S.C. 4/7 Legal Department.

4 copies.

Raj Bhavan
Bombay 6; February 11 , 1952

Subject :- The Bombay Co-operative Societies and Charged Expenditure(Amendment) Bill , 1952.

Sir,

With reference to your letter No. 2038, dated February 8, 1952, I am directed to return herewith the authentic copy of the Bombay Co-operative Societies and Charged Expenditure (Amendment) Bill, 1952 , with His Excellency the Governor's assent signified thereon.

Yours faithfully

Sd/
Secretary to the Governor
of Bombay.

S.C. 4/7

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ACTS.

Publication of the Bombay Co-operative Societies and Charged Expenditure (Amendment) Act, 1952.

Government of Bombay.
Legal Department.
Resolution No. 2448
Bombay Castle, 14th February 1952.

Letter to the Secretary to the Governor, No. 2038 dated the 8th February 1952.

Letter from the Secretary to the Governor, No. G.S.397 dated the 11th February 1952.

"With reference to your letter No. 2038, dated February 8, 1952, I am directed to return herewith the authentic copy of the Bombay Co-operative Societies and Charged Expenditure (Amendment) Bill, 1952, with His Excellency the Governor's assent signified thereon."

RESOLUTION:- The law should be published as Bombay Act No. II of 1952, in the Bombay Goverhment Gazette dated the 14th February 1952.

2. The Act should be translated into Marathi, Gujarati, Kannada and Hindi (in Devnagari Script) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Development Department.

By order of the Governor of Bombay.

Sd/- S.L.Chaudhari

Deputy Secretary to Government.

To

The manager, Government Central Press, Bombay (with a copy of the Act and with a request that 30 Gazette copies of the Act may be forwarded to the Legal Department and 400 copies to the Development Department
The Development Department.
The Oriental Translator to Government,)
The Bombay Legislature Department,) with a copy
The Director of Publicity, Bombay) of the Act.
The Enquiry Officer for the Secretariat,)
Bombay.)

REGISTERED No. B-1

The

Bombay Government Gazette

PUBLISHED BY AUTHORITY

MONDAY, 7TH JANUARY 1952.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V

[To be translated into Marathi, Gujarati, Kannada and Hindi (in Devnagari script) and the translations to be published in the "Bombay Government Gazette". The dates of publication to be reported.]

The following Bill is published under the proviso to rule 80 of the Bombay Legislative Assembly Rules :—

L. A. BILL No. II OF 1952.

A Bill to amend the Bombay Co-operative Societies Act, 1925, and the Bombay Charged Expenditure Act, 1950.

Bom. VII of 1925. Bom. of 1950.

WHEREAS it is expedient to amend the Bombay Co-operative Societies Act, 1925, and the Bombay Charged Expenditure Act, 1950, for the purposes hereinafter appearing; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Bombay Co-operative Societies and Charged Expenditure (Amendment) Act, 1952.

Amendment of section 3 of Bom. VII of 1925.

Bom. VII of 1925. X of 1949.

2. In section 3 of the Bombay Co-operative Societies Act, 1925, hereinafter referred to as the said Act, after clause (*b*) the following shall be inserted, namely :—

"(*bb*) 'banking company' means a banking company as defined in clause (*b*) of section 5 of the Banking Companies Act, 1949;

(*b2*) 'company' means a company as defined in clause (2) of sub-section (*1*) of section 2 of the Indian Companies Act, 1913, and includes a banking company; VII 1913.

(*b3*) 'firm' means a firm registered under section 59 of the Indian Partnership Act, 1932;". IX of 1932.

Amendment of section 6 of Bom. VII of 1925.

3. In section 6 of the said Act, after the words "other than a society" the words "company or firm" shall be inserted.

Amendment of section 7 of Bom. VII of 1925.

4. In section 7 of the said Act, in sub-section (*1*), for the words "member is a society" the words "member is a society, company or firm" shall be substituted.

Amendment of section 9 of Bom. VII of 1925.

5. In section 9 of the said Act, in sub-section (*2*),—

(*1*) in clause (*a*) for the words "member is a society" the words "member is a society, company or firm" shall be substituted;

(*2*) for clause (*b*) the following shall be substituted, namely:—

"(*b*) in the case of a society of which a member is a society, company or firm, by a duly authorised person of every such society or company and by one of the partners of every such firm and where all the members of the society are not societies, companies or firms by ten other members or when there are less than ten other members, by all of them."

Amendment of section 18 of Bom. VII of 1925.

6. In section 18 of the said Act, after sub-section (*2*) the following shall be inserted, namely:—.

"(*3*) A company, which has invested any part of its funds in the shares of a society may appoint any one of its directors or officers to vote on its behalf in the affairs of such society.

(*4*) Where a firm has invested any part of its funds in the shares of a society, one of its partners shall be entitled to vote in the affairs of the society in the firm's name."

Substitution of section 33A of Bom. VII of 1925.

7. For section 33A of the said Act, the following shall be substituted, namely:—

State Government may give loans, contribute to share capital or guarantee debentures, share capital or dividend.

"33A. Subject to such conditions as the State Government may by general or special order specify in this behalf and to such other conditions as may be provided for by any law for the time being in force, the State Government may—

(*a*) give loans to societies,

(*b*) contribute towards the share capital of a society, or

(*c*) guarantee the payment of principal debentures issued by a society or of interest thereon or both or the repayment of the share capital of a society to its members or the payment of dividend thereon at such rates as may be specified by the State Government."

Bom. LVI of 1950.

8. In the Bombay Charged Expenditure Act, 1950, after section 5 the following new section shall be inserted, namely :— Insertion of section 5A in Bom. LVI of 1950.

Bom. VII of 1925.

"5A. (1) Subject to the provisions of the Bombay Co-operative Societies Act, 1925, and subject also to such conditions as are specified in sub-section (2) and such other conditions as may by general or special order be specified by the State Government, the State Government— Expenditure incurred on account of guarantee and payment to a Housing Finance Society to be charged on Consolidated Fund of the State.

(a) shall guarantee to all the shareholders of a society which has been approved by the State Government in this behalf, a dividend at the rate of three and half per cent. per annum on the subscribed share capital not exceeding the face value of rupees one crore and the repayment of such share capital to the shareholders of such society ; and

(b) shall pay to such society on behalf of and as a trustee for such shareholders every year such amount as may be necessary to enable such society to distribute to its shareholders a yearly dividend at the rate of three and half per cent. per annum on the subscribed share capital not exceeding the face value of rupees one crore as aforesaid and also such amount as may be necessary at any time to enable such society to repay to its shareholders such share capital.

(2) The conditions which a society has to satisfy shall be that—

(i) its subscribed share capital shall not exceed the face value of rupees one crore ;

(ii) its object shall be to finance housing societies in the State of Bombay ;

(3) Any expenditure incurred by the State Government under a guarantee given under sub-section (1) shall be charged on the Consolidated Fund of the State."

STATEMENT OF OBJECTS AND REASONS.

This Bill seeks to amend sections 3, 6, 7, 9, 18 and 33-A of the Bombay Co-operative Societies Act, 1925, and to insert a new section 5A in the Bombay Charged Expenditure Act, 1950, with a view to (i) permit companies, banks and firms to hold shares of co-operative societies and (ii) permit Government to contribute towards the share capital of co-operative societies and to guarantee the repayment of the share capital of a society to its members or the payment of dividend thereon or both. It is also proposed to provide that the financial liabilities undertaken by Government in respect of share capital of certain co-operative societies shall be treated as charged on the Consolidated Fund of the State.

Dated the 5th January 1952. (Signed) VAIKUNTH L. MEHTA.

By order of the Governor of Bombay,

J. R. DHURANDHAR,
Additional Secretary to the Government of Bombay,
Legal Department.

Bombay, dated the 7th January 1952.

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

219.

L. A. BILL No. II OF 1952.

A Bill to amend the Bombay Co-operative Societies Act, 1925, and the Bombay Charged Expenditure Act, 1950.

(As read for the third time and passed by the Legislative Assembly on the 16th January 1952.)

Bom. VII of 1925. Bom. LVI of 1950.

WHEREAS it is expedient to amend the Bombay Co-operative Societies Act, 1925, and the Bombay Charged Expenditure Act, 1950, for the purposes hereinafter appearing; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Bombay Co-operative Societies and Charged Expenditure (Amendment) Act, 1952.

Amendment of section 3 of Bom. VII of 1925.

Bom. VII of 1925.

2. In section 3 of the Bombay Co-operative Societies Act, 1925, hereinafter referred to as the said Act, after clause (*b*) the following shall be inserted, namely:—

X of 1949.

"(*b1*) 'banking company' means a banking company as defined in clause (*b*) of section 5 of the Banking Companies Act, 1949;

MO-v Bk Mb 358—1

(*b2*) 'company' means a company as defined in clause (2) of sub-section (*1*) of section 2 of the Indian Companies Act, 1913, and includes a banking company; VII of 1913.

(*b3*) 'firm' means a firm registered under section 59 of the Indian Partnership Act, 1932;". IX of 1932.

Amendment of section 6 of Bom. VII of 1925.

3. In section 6 of the said Act, after the words "other than a society" the words "company or firm" shall be inserted.

Amendment of section 7 of Bom. VII of 1925.

4. In section 7 of the said Act, in sub-section (*1*), for the words "member is a society" the words "member is a society, company or firm" shall be substituted.

Amendment of section 9 of Bom. VII of 1925.

5. In section 9 of the said Act, in sub-section (*2*),—

(*1*) in clause (*a*) for the words "member is a society" the words "member is a society, company or firm" shall be substituted;

(*2*) for clause (*b*) the following shall be substituted, namely:—

"(*b*) in the case of a society of which a member is a society, company or firm, by a duly authorised person of every such society or company and by one of the partners of every such firm and where all the members of the society are not societies, companies or firms by ten other members or when there are less than ten other members, by all of them."

Amendment of section 18 of Bom. VII of 1925.

6. In section 18 of the said Act, after sub-section (*2*) the following shall be inserted, namely:—

"(*3*) A company, which has invested any part of its funds in the shares of a society may appoint any one of its directors or officers to vote on its behalf in the affairs of such society.

(*4*) Where a firm has invested any part of its funds in the shares of a society, one of its partners shall be entitled to vote in the affairs of the society in the firm's name."

Substitution of section 33A of Bom. VII of 1925.

7. For section 33A of the said Act, the following shall be substituted, namely:—

State Government may give loans, contribute to share capital or guarantee debentures, share capital or dividend.

"33A. Subject to such conditions as the State Government may by general or special order specify in this behalf and to such other conditions as may be provided for by any law for the time being in force, the State Government may—

(*a*) give loans to societies,

(*b*) contribute towards the share capital of a society, or

(*c*) guarantee the payment of principal debentures issued by a society or of interest thereon or both or the repayment of the share capital of a society to its members or the payment of dividend thereon at such rates as may be specified by the State Government,

(*d*) guarantee the repayment of loans, given by a co-operative bank to a society."

Bom. LVI of 1950.

8. In the Bombay Charged Expenditure Act, 1950, after section 5 the following new section shall be inserted, namely :— Insertion of section 5A in Bom. LVI of 1950.

Bom. VII of 1925.

"5A. (*1*) Subject to the provisions of the Bombay Co-operative Societies Act, 1925, and subject also to such conditions as are specified in sub-section (*2*) and such other conditions as may by general or special order be specified by the State Government, the State Government— Expenditure incurred on account of guarantee and payment to a Housing Finance Society to be charged on Consolidated Fund of the State.

(*a*) shall guarantee to all the shareholders of a society which has been approved by the State Government in this behalf, a dividend at the rate of three and half per cent. per annum on the subscribed share capital not exceeding the face value of rupees one crore and the repayment of such share capital to the shareholders of such society ; and

(*b*) shall pay to such society on behalf of and as a trustee for such shareholders every year such amount as may be necessary to enable such society to distribute to its shareholders a yearly dividend at the rate of three and half per cent. per annum on the subscribed share capital not exceeding the face value of rupees one crore as aforesaid and also such amount as may be necessary at any time to enable such society to repay to its shareholders such share capital.

(*2*) The conditions which a society has to satisfy shall be that—

(*i*) its subscribed share capital shall not exceed the face value of rupees one crore ;

(*ii*) its object shall be to finance housing societies in the State of Bombay ;

(*3*) Any expenditure incurred by the State Government under a guarantee given under sub-section (*1*) shall be charged on the Consolidated Fund of the State."

STATEMENT OF OBJECTS AND REASONS.

This Bill seeks to amend sections 3, 6, 7, 9, 18 and 33-A of the Bombay Co-operative Societies Act, 1925, and to insert a new section 5A in the Bombay Charged Expenditure Act, 1950, with a view to (*i*) permit companies, banks and firms to hold shares of co-operative societies and (*ii*) permit Government to contribute towards the share capital of co-operative societies and to guarantee the repayment of the share capital of a society to its members or the payment of dividend thereon or both. It is also proposed to provide that the financial liabilities undertaken by Government in respect of share capital of certain co-operative societies shall be treated as charged on the Consolidated Fund of the State.

Dated the 5th January 1952.

VAIKUNTH L. MEHTA.

MO-V Bk Hb 358—2

Government of Bombay

LEGAL DEPARTMENT

[L. A. BILL No. II OF 1952]

(As read for the third time and passed by the Legislative Assembly on the 16th January 1952.)

A Bill to amend the Bombay Co-operative Societies Act, 1925, and the Bombay Charged Expenditure Act, 1950.

[Shri. VAIKUNTH L. MEHTA, M.L.A.]

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L. A. BILL No. II OF 1952.

A Bill to amend the Bombay Co-operative Societies Act, 1925, and the Bombay Charged Expenditure Act, 1950.

(As read for the third time and passed by the Legislative Assembly on ---- 16th January 1952.)

(As read for the third time and passed by the Legislative Council on the 24th January 1952.)

Bom. VII of 1925. Bom. LVI of 1950.

WHEREAS it is expedient to amend the Bombay Co-operative Societies Act, 1925, and the Bombay Charged Expenditure Act, 1950, for the purposes hereinafter appearing; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Bombay Co-operative Societies and Charged Expenditure (Amendment) Act, 1952.

Amendment of section 3 of Bom. VII of 1925.

Bom. VII of 1925.

2. In section 3 of the Bombay Co-operative Societies Act, 1925, hereinafter referred to as the said Act, after clause (*b*) the following shall be inserted, namely :—

X of 1949.

"(*b1*) 'banking company' means a banking company as defined in clause (*b*) of section 5 of the Banking Companies Act, 1949;

MO-v Bk Hb 375—1

(*b2*) 'company' means a company as defined in clause (2) of sub-section (*1*) of section 2 of the Indian Companies Act, 1913, and includes a banking company; VII of 1913.

(*b3*) 'firm' means a firm registered under section 59 of the Indian Partnership Act, 1932;". IX of 1932.

Amendment of section 6 of Bom. VII of 1925.

3. In section 6 of the said Act, after the words "other than a society" the words "company or firm" shall be inserted.

Amendment of section 7 of Bom. VII of 1925.

4. In section 7 of the said Act, in sub-section (*1*), for the words "member is a society" the words "member is a society, company or firm" shall be substituted.

Amendment of section 9 of Bom. VII of 1925.

5. In section 9 of the said Act, in sub-section (*2*),—

(*1*) in clause (*a*) for the words "member is a society" the words "member is a society, company or firm" shall be substituted;

(*2*) for clause (*b*) the following shall be substituted, namely:—

"(*b*) in the case of a society of which a member is a society, company or firm, by a duly authorised person of every such society or company and by one of the partners of every such firm and where all the members of the society are not societies, companies or firms by ten other members or when there are less than ten other members, by all of them."

Amendment of section 18 of Bom. VII of 1925.

6. In section 18 of the said Act, after sub-section (*2*) the following shall be inserted, namely:—

"(*3*) A company, which has invested any part of its funds in the shares of a society may appoint any one of its directors or officers to vote on its behalf in the affairs of such society.

(*4*) Where a firm has invested any part of its funds in the shares of a society, one of its partners shall be entitled to vote in the affairs of the society in the firm's name."

Substitution of section 33A of Bom. VII of 1925.

7. For section 33A of the said Act, the following shall be substituted, namely:—

State Government may give loans, contribute to share capital or guarantee debentures, share capital or dividend.

"33A. Subject to such conditions as the State Government may by general or special order specify in this behalf and to such other conditions as may be provided for by any law for the time being in force, the State Government may—

(*a*) give loans to societies,

(*b*) contribute towards the share capital of a society, or

(*c*) guarantee the payment of principal debentures issued by a society or of interest thereon or both or the repayment of the share capital of a society to its members or the payment of dividend thereon at such rates as may be specified by the State Government,

(*d*) guarantee the repayment of loans given by a co-operative bank to a society."

Bom. LVI of 1950

8. In the Bombay Charged Expenditure Act, 1950, after section 5 the following new section shall be inserted, namely :—

Insertion of section 5A in Bom. LVI of 1950.

Bom. VII of 1925.

"5A. (*1*) Subject to the provisions of the Bombay Co-operative Societies Act, 1925, and subject also to such conditions as are specified in sub-section (*2*) and such other conditions as may by general or special order be specified by the State Government, the State Government—

Expenditure incurred on account of guarantee and payment to a Housing Finance Society to be charged on Consolidated Fund of the State.

(*a*) shall guarantee to all the shareholders of a society which has been approved by the State Government in this behalf, a dividend at the rate of three and half per cent. per annum on the subscribed share capital not exceeding the face value of rupees one crore and the repayment of such share capital to the shareholders of such society ; and

(*b*) shall pay to such society on behalf of and as a trustee for such shareholders every year such amount as may be necessary to enable such society to distribute to its shareholders a yearly dividend at the rate of three and half per cent. per annum on the subscribed share capital not exceeding the face value of rupees one crore as aforesaid and also such amount as may be necessary at any time to enable such society to repay to its shareholders such share capital.

(*2*) The conditions which a society has to satisfy shall be that—

(*i*) its subscribed share capital shall not exceed the face value of rupees one crore ;

(*ii*) its object shall be to finance housing societies in the State of Bombay ;

(*3*) Any expenditure incurred by the State Government under a guarantee given under sub-section (*1*) shall be charged on the Consolidated Fund of the State."

Government of Bombay

LEGAL DEPARTMENT

[L. A. BILL No. II OF 1952]

(As read for the third time and passed by the Legislative Assembly on the 16th January 1952.)

(As read for the third time and passed by the Legislative Council on the 24th January 1952.)

A Bill to amend the Bombay Co-operative Societies Act, 1925, and the Bombay Charged Expenditure Act, 1950.

[Shri. VAIKUNTH L. MEHTA, M.L.A.]

MO.V Bk Hb 375—2

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Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV

Acts of the Bombay Legislature and Ordinances promulgated and Regulations made by the Governor.

CONTENTS.

	Pages
BOMBAY ACT No. II OF 1952—An Act to amend the Bombay Co-operative Societies Act, 1925, and the Bombay Charged Expenditure Act, 1950 ...	24-26

The following Act of the Bombay Legislature having been assented to by the Governor on the 11th February 1952 is hereby published for general information.

J. R. DHURANDHAR,
Additional Secretary to the Government of Bombay,
Legal Department.

BOMBAY ACT No. II OF 1952.

(First published, after having received the assent of the Governor, in the "Bombay Government Gazette" on the 14th February 1952.)

An Act to amend the Bombay Co-operative Societies Act, 1925, and the Bombay Charged Expenditure Act, 1950.

Bom. VII of 1925, Bom. LI of 1950.

WHEREAS it is expedient to amend the Bombay Co-operative Societies Act, 1925, and the Bombay Charged Expenditure Act, 1950, for the purposes hereinafter appearing; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Bombay Co-operative Societies and Charged Expenditure (Amendment) Act, 1952.

Bom. VII of 1925.

Amendment of section 3 of Bom. VII of 1925.

2. In section 3 of the Bombay Co-operative Societies Act, 1925, hereinafter referred to as the said Act, after clause (*b*) the following shall be inserted, namely :—

X of 1949.

"(*b1*) 'banking company' means a banking company as defined in clause (*b*) of section 5 of the Banking Companies Act, 1949;

(*b2*) 'company' means a company as defined in clause (2) of sub-section (*1*) of section 2 of the Indian Companies Act, 1913, and includes a banking company; VII of 1913.

(*b3*) 'firm' means a firm registered under section 59 of the Indian Partnership Act, 1932;". IX of 1932

Amendment of section 6 of Bom. VII of 1925.

3. In section 6 of the said Act, after the words "other than a society" the words "company or firm" shall be inserted.

Amendment of section 7 of Bom. VII of 1925.

4. In section 7 of the said Act, in sub-section (*1*), for the words "member is a society" the words "member is a society, company or firm" shall be substituted.

Amendment of section 9 of Bom. VII of 1925.

5. In section 9 of the said Act, in sub-section (*2*),—

(*1*) in clause (*a*) for the words "member is a society" the words "member is a society, company or firm" shall be substituted;

(*2*) for clause (*b*) the following shall be substituted, namely:—

"(*b*) in the case of a society of which a member is a society, company or firm, by a duly authorised person of every such society or company and by one of the partners of every such firm and where all the members of the society are not societies, companies or firms by ten other members or when there are less than ten other members, by all of them."

Amendment of section 18 of Bom. VII of 1925.

6. In section 18 of the said Act, after sub-section (*2*) the following shall be inserted, namely:—

"(*3*) A company, which has invested any part of its funds in the shares of a society may appoint any one of its directors or officers to vote on its behalf in the affairs of such society.

(*4*) Where a firm has invested any part of its funds in the shares of a society, one of its partners shall be entitled to vote in the affairs of the society in the firm's name."

Substitution of section 33A of Bom. VII of 1925.

7. For section 33A of the said Act, the following shall be substituted, namely:—

State Government may give loans, contribute to share capital or guarantee debentures, share capital or dividend.

"33A. Subject to such conditions as the State Government may by general or special order specify in this behalf and to such other conditions as may be provided for by any law for the time being in force, the State Government may,—

(*a*) give loans to societies,

(*b*) contribute towards the share capital of a society, or

(*c*) guarantee the payment of principal debentures issued by a society or of interest thereon or both or the repayment of the share capital of a society to its members or the payment of dividend thereon at such rates as may be specified by the State Government,

(*d*) guarantee the repayment of loans given by a co-operative bank to a society."

Bom. LVI of 1950.

Insertion of section 5A in Bom. LVI of 1950.

8. In the Bombay Charged Expenditure Act, 1950, after section 5 the following new section shall be inserted, namely :—

Bom. VII of 1925.

Expenditure incurred on account of guarantee and payment to a Housing Finance Society to be charged on Consolidated Fund of the State.

"5A. (*1*) Subject to the provisions of the Bombay Co-operative Societies Act, 1925, and subject also to such conditions as are specified in sub-section (*2*) and such other conditions as may by general or special order be specified by the State Government, the State Government—

(*a*) shall guarantee to all the shareholders of a society which has been approved by the State Government in this behalf, a dividend at the rate of three and half per cent. per annum on the subscribed share capital not exceeding the face value of rupees one crore and the repayment of such share capital to the shareholders of such society ; and

(*b*) shall pay to such society on behalf of and as a trustee for such shareholders every year such amount as may be necessary to enable such society to distribute to its shareholders a yearly dividend at the rate of three and half per cent. per annum on the subscribed share capital not exceeding the face value of rupees one crore as aforesaid and also such amount as may be necessary at any time to enable such society to repay to its shareholders such share capital.

(*2*) The conditions which a society has to satisfy shall be that—

(*i*) its subscribed share capital shall not exceed the face value of rupees one crore ;

(*ii*) its object shall be to finance housing societies in the State of Bombay ;

(*3*) Any expenditure incurred by the State Government under a guarantee given under sub-section (*1*) shall be charged on the Consolidated Fund of the State."

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